

2013 DRAFTING REQUEST

Bill

Received: 11/15/2012	Received By: jkreye
Wanted: As time permits	Same as LRB:
For: Garey Bies (608) 266-5350	By/Representing: cory
May Contact:	Drafter: jkreye
Subject: Tax, Other - alcohol and tobacco	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
 Requester's email: **Rep.Bies@legis.wisconsin.gov**
 Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Minimum tax rate on tobacco products

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 11/21/2012			_____			
/P1	jkreye 1/10/2013	jdyer 11/27/2012	rschluet 11/27/2012	_____	lparisi 11/27/2012		State
/P2	jkreye 7/19/2013	jdyer 1/15/2013	jmurphy 1/16/2013	_____	mbarman 1/16/2013		State
/P3	jkreye	scalvin	phenry	_____	srose		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	9/18/2013	8/1/2013	8/5/2013	_____	8/5/2013		
/1		rschluet	rschluet	_____	srose	srose	State
		9/18/2013	9/18/2013	_____	9/18/2013	9/18/2013	

FE Sent For:

<END>



A handwritten note consisting of the word "intro." followed by a period, enclosed within a hand-drawn oval.

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*Please jacket
 Mark 1
 Joe*

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/?	jkreye 11/21/2012	<i>19/18 jld</i>	<i>9/18/13</i>				
/P1	jkreye 1/10/2013	jdyer 11/27/2012	rschuet 11/27/2012		lparisi 11/27/2012		State
/P2	jkreye 7/19/2013	jdyer 1/15/2013	jmurphy 1/16/2013		mbarman 1/16/2013		State
/P3		scalvin	phenry		srose		State

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		8/1/2013	8/5/2013	_____	8/5/2013		

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/P2		jdyer 1/15/2013	jmurphy 1/16/2013		mbarman 1/16/2013		State
<p>/P3 sac 08/01/2013</p> <p><i>[Handwritten signatures: jph, jh, gf]</i></p>							

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/?	jkreye 11/21/2012	P2/15 jkd					
/P1		jdye 11/27/2012	rschluet 11/27/2012		lparisi 11/27/2012		State

FE Sent For:

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/?	jkreye	PI 11/27 jld					

FE Sent For:

<END>

Kreye, Joseph

From: Bruce, Cory
Sent: Thursday, November 15, 2012 12:38 PM
To: Kreye, Joseph
Subject: Draft - tobacco product tax equity

Joe,
I'm attaching model legislation regarding tax on tobacco products. We'd like to have this drafted.

Let me know if you have any questions.

Thanks!
Cory



20121115124528...

MODEL LEGISLATION FOR CREATING TOBACCO PRODUCT TAX EQUITY

[An add-on provision for states with any percentage-of-price OTP tax.]

Sec. _____ Minimum Tobacco Product Tax Rates. To promote tax equity and fairness, reduce tobacco use and its many harms and costs, and to ensure that no tobacco products subject to the tax rates established elsewhere in this chapter can evade reasonable taxation through predatory or other anti-competitive or bargain-basement pricing, all tobacco products shall be subject to the percentage-of-price tax rate established by this chapter and the following minimum taxes:

(a) for cigars, a minimum tax rate equal to the amount of the total tax on a pack of 20 cigarettes established by this chapter per package of five cigars, with a proportionate tax for any package or quantity of cigars consisting of fewer or more than five cigars, and no cigars with a wholesale price of less than \$1.00 per cigar shall be sold in packages of fewer than five;

(b) for any tobacco product other than cigarettes or cigars that is offered in discrete single-use lozenges, pouches, pills, capsules or other single-dose or single-use units, or in packages of such single-use units, a minimum tax equal to the amount of the total tax per-cigarette established by this chapter per each single-use unit, and all such tobacco products shall be sold in packages containing at least ten [twenty] individual single-use units;

(c) for any smokeless tobacco product that consists of loose tobacco or that is otherwise not subject to paragraph (b), a minimum tax equal to the amount of the total tax on a pack of 20 cigarettes established by this chapter per 1.2 ounces, with a proportionate tax on any weights of fewer or more than 1.2 ounces, based on the net weight as provided in good faith by the manufacturer, and all such tobacco products shall be sold in packages containing at least one ounce;

(d) for roll-your-own tobacco and any other loose tobacco meant for smoking, a minimum tax equal to the amount of the total tax on a pack of 20 cigarettes established by this chapter per 0.65 ounces with a proportionate tax on any other weights, based on the net weight as provided in good faith by the manufacturer, and all such tobacco products shall be sold in packages containing at least 0.65 ounces; and

(e) for any other tobacco product, an amount equal to the total tax under this chapter on twenty cigarettes per each package or container that contains any such tobacco product intended or expected for final sale to consumers, with the tax applied to the smallest package or container in any package or container intended or expected for sale to consumers that contains multiple smaller packages or containers.

The Department of Revenue may issue regulations as necessary to implement this section.

Notes: Regular moist snuff smokeless tobacco is typically sold in 1.2 ounce cans (and fewer than 5% is sold in packages of less than one ounce). Cigarillos and blunts (often sold in kid-attracting flavors) typically come in packages of five. 20 Roll-your-own (RYO) cigarettes weigh 0.65 ounces, 0.0325 ounces per cigarette, the equivalency rate used in the MSA and in setting the new federal tax rate for RYO tobacco to make it equal the tax rate on regular cigarettes. To ensure tax equity, statutory "cigarette" definitions must also be revised to reach all cigarettes, including those masquerading as cigars.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0574/P1

JK:.....

JK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 11-21-12

DN

X

Gen

1

AN ACT ...; relating to: minimum tax on tobacco products.✓

Analysis by the Legislative Reference Bureau

Under current law, the excise tax rate on tobacco products sold in this state is 71 percent of the manufacturer's list price to distributors, except that the tax rate on moist snuff sold in this state is 100 percent of the manufacturer's list price to distributors. Under current law, the maximum tax on cigars is 50 cents for each cigar.

Under this bill, the excise tax rate on tobacco products sold in this state is the greater of the rate determined under current law or the following:

1. For cigars, 54 cents for each cigar.
2. For any tobacco product that is offered for sale in lozenges, pills, capsules, or other single-use units, 126 mills on each unit.
3. For any smokeless tobacco product that consists of loose tobacco, 126 mills on 1.2 ounces.
4. For any loose tobacco that is intended for smoking, 126 mills on 0.65 ounces.
5. For any other tobacco product, \$2.52 on each package or container.

This bill also eliminates the maximum rate on cigars of 50 cents on each cigar.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 139.76 (1) of the statutes is amended to read:

139.76 (1) ~~An~~ Except as provided in sub. (3) [✓] an excise tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of tobacco products by any person engaged as a distributor of them at the rate, for tobacco products, not including moist snuff, of 71 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products and, for moist snuff, at the rate of 100 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products. [✓] ~~The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 cents for each cigar.~~ On products imported from another country, not including moist snuff, the rate of tax is 71 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties and transportation costs to the United States. On moist snuff imported from another country, the rate of the tax is 100 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties, and transportation costs to the United States. The tax attaches at the time the tobacco products are received by the distributor in this state. The tax shall be passed on to the ultimate consumer of the tobacco products. All tobacco products received in this state for sale or distribution within this state, except tobacco products actually sold as provided in sub. (2), shall be subject to such tax.

History: 1981 c. 20; 1983 a. 27; 1989 a. 56; 1999 a. 9; 2001 a. 16; 2005 a. 22; 2007 a. 20; 2009 a. 28.

SECTION 2. 139.76 (3) of the statutes is created to read:

1 139.76 (3) Beginning on the effective date of this subsection... LRB inserts
2 date, a person who is subject to the tax imposed under sub. (1) shall pay the greater
3 of the amount determined under sub. (1) or the following:

4 (a) For cigars, 54 cents for each cigar.

5 (b) For any tobacco product that is offered for sale in lozenges, pills, capsules,
6 or other single-use units, 126 mills on each unit.

7 (c) For any smokeless tobacco product that consists of loose tobacco or that is
8 otherwise not a product including under par. (b), 126 mills on 1.2 ounces and a
9 proportionate amount on any weight that is less or more than 1.2 ounces.

10 (d) For any loose tobacco that is intended for smoking, 126 mills on 0.65 ounces
11 and a proportionate amount on any weight that is less or more than 0.65 ounces.

12 (e) For any tobacco product other than that listed in pars. (a) to (d), \$2.52 on
13 each package or container. For purposes of this paragraph, the tax applies to the
14 smallest, discrete package or container in any larger package or container intended
15 for sale to consumers that contains multiple smaller packages or containers.

16 **SECTION 3. Effective date.**

17 (1) This act takes effect on the first day of the 3rd month beginning after
18 publication.

19 (END)

d-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0574/P1dn

JK:.....

date

jld

Representative Bies:✓

Please review this draft carefully to ensure that it is consistent with your intent. As much as possible, I used the mill rate for cigarettes under current law, or the dollar amount equivalent, to describe the minimum rates for tobacco products.✓

Please note that I don't know if the minimum rates established in the bill are actually more or less than the rates imposed on tobacco products under current law (with the exception of the maximum rate on cigars under current law). You may want to share the draft with DOR✓ if you want that information before introducing the bill. If the rates created by the bill are actually greater than those imposed under current law, then you may want to simply raise the rates under current law. Let me know if you have questions.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0574/P1dn
JK:jld:rs

November 27, 2012

Representative Bies:

Please review this draft carefully to ensure that it is consistent with your intent. As much as possible, I used the mill rate for cigarettes under current law, or the dollar amount equivalent, to describe the minimum rates for tobacco products.

Please note that I don't know if the minimum rates established in the bill are actually more or less than the rates imposed on tobacco products under current law (with the exception of the maximum rate on cigars under current law). You may want to share the draft with DOR if you want that information before introducing the bill. If the rates created by the bill are actually greater than those imposed under current law, then you may want to simply raise the rates under current law. Let me know if you have questions.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Bruce, Cory
Sent: Wednesday, December 19, 2012 11:05 AM
To: Kreye, Joseph
Subject: FW: Feedback on 1st draft LRB-0574 P1
Attachments: Feedback on LRB-0574P1.docx

Joe,

Attached are the recommended changes for the draft on tobacco product tax equity. Among the recommendations are changing definitions of tobacco products (to keep up with the ever-changing industry), not using mills when figuring out tax, and increasing the percentage of price rate for non-moist snuff tobacco.

We'd also like to incorporate another legislative draft we had done on tobacco product placement. That's LRB 0593 and it was drafted by Mark Kunkel.

I think the easiest thing to do is to set up a meeting with the anti-tobacco folks, our office and you so that we can get all the questions answered to avoid multiple drafts. I'll email everyone and see when a good time mid-January might be. I just got served with Jury duty though (week of Jan.14) so it might have to be after that week!

Have a Merry Christmas!
Cory

From: Melissa Horn [<mailto:mhorn@healthfirstwi.org>]
Sent: Monday, December 10, 2012 12:00 PM
To: Bruce, Cory
Subject: Feedback on 1st draft LRB-0574 P1

Hi Cory,

My apologies for this taking a couple extra days - we wanted to make sure the different sections addressed the loopholes in the pricing of tobacco products as much as possible. I'd be happy to come in and go through these suggestions with you and Garey if you have any questions. My schedule is pretty open this week on every day except tomorrow (Tuesday). Let me know what you think and thank you again for working on this!

-Melissa

--

Melissa Horn
Policy and Grassroots Specialist - Tobacco
321 E Main Street, Madison, WI 53703
(608) 443-4366/ (314) 952-4742 cell
mhorn@healthfirstwi.org

Health begins at home, work, school and play
www.healthfirstwi.org

Feedback on LRB-0574/P1

1. In Section 1, the percentage of price rate for non-moist snuff tobacco products should be increased to 84% to match the current cigarette tax rate, from 71% (see pg. 2, line 6). The moist snuff tax rate is fine, especially because of the minimum tax rate set in Section 2.
2. For Section 2, it might be better to tie the tax rates to the cigarette tax rate rather than setting actual numerical rates, so that any time the cigarette tax is increased, the minimum tax rates increase automatically.
3. To ensure that fake little cigars are taxed at the same rate as cigarettes, the cigarette definition should be improved. See insert for Section 3.
4. The "tobacco products" definition needs to be improved to include ALL tobacco products, since right now it is limited to non-cigarette products that must be chewed or smoked – and snus, for instance, isn't chewed or smoked. See insert for Section 4.
5. A new definition for "single-unit tobacco" might be helpful for the later section on setting the minimum tax rates. See insert for Section 5.
6. There should be an inventory tax added to the proposal, since nothing currently exists in the tobacco products tax section of the statute, while there is already language in the cigarette tax section of the statute. See insert for Section 6.

2013 – 2014 LEGISLATURE

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT *to amend* 139.76 (1); and *to create* 139.76 (3) of the statutes; **relating to:** minimum tax on tobacco products.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 139.76 (1) of the statutes is amended to read:

139.76 (1) Except as provided in sub. (3) an excise tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of tobacco products by any person engaged as a distributor of them at the rate, for tobacco products, not including moist snuff, of 84 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products and, for moist snuff, at the rate of 100 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products. ~~The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 cents for each cigar.~~ On products imported from another country, not including moist snuff, the rate of tax is 84 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties and transportation costs to the United States. On moist snuff imported from another country, the rate of the tax is 100 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties, and transportation costs to the United States. The tax attaches at the time the tobacco products are received by the distributor in this state. The tax shall be passed on to the ultimate consumer of the tobacco products. All tobacco products received in this state for sale or distribution within this state, except tobacco products actually sold as provided in sub. (2), shall be subject to such tax.

SECTION 2. 139.76 (3) of the statutes is created to read:

139.76 (3) Beginning on the effective date of this subsection [LRB inserts date], a person who is subject to the tax imposed under sub. (1) shall pay the greater of the amount determined under sub. (1) or the following:

(a) For cigars, the amount of the total tax on a pack of 20 cigarettes under s. 139.31 per package of four cigars, with a proportionate tax for any package or quantity of cigars consisting of fewer or more than four cigars, and no cigars with a wholesale price of less than \$1.00 per cigar shall be sold in packages fewer than five.

(b) For single-unit tobacco products, the amount of the total tax per-cigarette established by s. 139.31 per each single-use unit. — *add the package amount restriction?*

(c) For any smokeless tobacco product that consists of loose tobacco or that is otherwise not a product including under par. (b), the amount of the total tax on a pack of 20 cigarettes established by s. 139.31 and a proportionate amount on any weight that is less or more than 1.2 ounces.

(d) For any loose tobacco that is intended for smoking, the amount of the total tax on a pack of 20 cigarettes established by s. 139.31 and a proportionate amount on any weight that is less or more than 0.65 ounces.

(e) For any tobacco product other than that listed in pars. (a) to (d), an amount equal to the total tax under this chapter on twenty cigarettes per each package or container. For purposes of this paragraph, the tax applies to the smallest, discrete package or container in any larger package or container intended for sale to consumers that contains multiple smaller packages or containers.

Section 3. 139.30(1m) of the statutes is amended to read:

(1m) "Cigarette" means:

(a) any roll of tobacco wrapped in paper or any substance other than tobacco;

(b) any roll for smoking containing tobacco, wrapped in any substance, weighing four and a half (4.5) pounds per thousand or less except those wrapped entirely in tobacco leaf that do not have a filter;

(c) any roll for smoking containing tobacco wrapped in any substance, however labeled or named, which because of its appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, purchased by, or consumed by consumers as a cigarette as defined above; and

(d) any roll for smoking made wholly or in part of tobacco labeled as anything other than a cigarette or not bearing a label, including but not limited to little cigars, if it meets two or more of the following criteria:

1. the product is sold in packs containing 20 or 25 sticks;

2. the product is available for sale in cartons of ten packs;

3. the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;

4. the product is of a length and diameter found in commercially-manufactured cigarettes;

5. the product has a cellulose acetate or other integrated filter;

6. the product weighs less than four and half (4.5) pounds per thousand sticks; or

7. the product is marketed or advertised to consumers as a cigarette or cigarette substitute.

Section 4. 139.75(12) of the statutes is amended to read:

139.75(12) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; single-unit

trying to get the little cigar taxed as cigarette

fed work?

tobacco products; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and any product containing, made, or derived from other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means; but "tobacco products" does not include cigarettes, as defined under s. 139.30 (1m) and excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Section 5. 139.75(9n) of the statutes is created to read:

139.75(9n) "Single-unit tobacco products" means any tobacco product other than cigarettes or cigars that is offered in discrete single-use tablets, lozenges, pouches, pills, or other single-dose or single-use units, or in packages of such single-use units. All such tobacco products shall be sold in packages containing at least twenty individual single-use units.

*not
definition
needs
to
be moved
to
importer
language*

Section 6. 139.761 of the statutes is created to read:

139.761 Tobacco Products Inventory tax imposed; procedure

(1) **INVENTORY TAX IMPOSED.** On the effective date of any increase in the rates under s. 139.76, an inventory tax is imposed upon all tobacco products held in inventory for sale or resale on which the tobacco products tax has been paid at the prior rate. Any person who is in possession of any such tobacco products shall pay the tax imposed under this section. Any person liable for this tax shall determine the amount of tobacco products in the person's possession on the effective date of the increase, and by the 30th day after the effective date of the increase the person shall file a return and shall by that date pay the tax due.

(2) **INVENTORY TAX COMPUTATION.** The tobacco products inventory tax under this section is computed by multiplying the amount of tobacco products held in inventory for sale or resale by the difference between the prior tax rate and the new tax rate.

(3) **ADMINISTRATION.** Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1)(a) and (c) and (2) to (7), 71.92, 73.01, 73.015 and 73.0301 apply to this section.

(4) **LATE FILING FEE.** Any person who fails to file a tobacco products inventory tax return when due shall pay a late filing fee of \$50. A return that is mailed is timely if it is mailed in a properly addressed envelope with postage prepaid, if the envelope is postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(5) **INTEREST ON DELINQUENT PAYMENTS.** If any person does not timely pay the tax imposed under this section, that person is liable for interest at the rate of 2% per month or fraction of a month from the date the tax is due until the date when the tax is paid.

(6) PENALTY. If any person who is liable for the tax under this section files a false or fraudulent return, that person is also liable, in addition to the tax due, for an amount equal to the amount of tax the person evaded or attempted to evade.

SECTION 6. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0574/P1
JK:jld:rs

P2
PMR

MDK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1-10-13

DPW
1/16/13
gm

D-N

Regen

1 AN ACT *to amend* 139.76 (1); and *to create* 139.76 (3) of the statutes; relating
2 to: ^a minimum tax on tobacco products. Insert 1-2 ✓

Analysis by the Legislative Reference Bureau

Under current law, the excise tax rate on tobacco products sold in this state is 71 percent of the manufacturer's list price to distributors, except that the tax rate on moist snuff sold in this state is 100[✓] percent of the manufacturer's list price to distributors. Under current law, the maximum tax on cigars is 50 cents for each cigar.

Under this bill, the excise tax rate on tobacco products sold in this state is the greater of the rate determined under current law or the following:

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4. For any loose tobacco that is intended for smoking, 126 mills on 0.65 ounces.
5. For any other tobacco product, \$2.52 on each package or container.

This bill also eliminates the maximum rate on cigars of 50 cents on each cigar.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Insert 2-1A & B ✓
1 SECTION 1. 139.76 (1) of the statutes is amended to read:

2 139.76 (1) ~~An~~ Except as provided in sub. (3) an excise tax is imposed upon the
3 sale, offering or exposing for sale, possession with intent to sell or removal for
4 consumption or sale or other disposition for any purpose of tobacco products by any
5 person engaged as a distributor of them at the rate, for tobacco products, not
6 including moist snuff, of 71 percent of the manufacturer's established list price to
7 distributors without diminution by volume or other discounts on domestic products
8 and, for moist snuff, at the rate of 100 percent of the manufacturer's established list
9 price to distributors without diminution by volume or other discounts on domestic
10 products. ~~The tax imposed under this subsection on cigars shall not exceed an~~
11 ~~amount equal to 50 cents for each cigar.~~ On products imported from another country,
12 not including moist snuff, the rate of tax is 71 percent of the amount obtained by
13 adding the manufacturer's list price to the federal tax, duties and transportation
14 costs to the United States. On moist snuff imported from another country, the rate
15 of the tax is 100 percent of the amount obtained by adding the manufacturer's list
16 price to the federal tax, duties, and transportation costs to the United States. The
17 tax attaches at the time the tobacco products are received by the distributor in this
18 state. The tax shall be passed on to the ultimate consumer of the tobacco products.
19 All tobacco products received in this state for sale or distribution within this state,
20 except tobacco products actually sold as provided in sub. (2), shall be subject to such
21 tax.

Insert 2-21 ✓
22 SECTION 2. 139.76 (3) of the statutes is created to read:

23 139.76 (3) Beginning on the effective date of this subsection [LRB inserts
24 date], a person who is subject to the tax imposed under sub. (1) shall pay the greater
25 of the amount determined under sub. (1) or the following:

(a) For cigars, 54 cents for each cigar.

(b) For any tobacco product that is offered for sale in lozenges, pills, capsules, or other single-use units, 126 mills on each unit.

(c) For any smokeless tobacco product that consists of loose tobacco or that is otherwise not a product including under par. (b), 126 mills on 1.2 ounces and a proportionate amount on any weight that is less or more than 1.2 ounces.

(d) For any loose tobacco that is intended for smoking, 126 mills on 0.65 ounces and a proportionate amount on any weight that is less or more than 0.65 ounces.

(e) For any tobacco product other than that listed in pars. (a) to (d), \$2.52 on each package or container. For purposes of this paragraph, the tax applies to the smallest, discrete package or container in any larger package or container intended for sale to consumers that contains multiple smaller packages or containers.

SECTION 3. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

(END)

The treatment of sections 73.01(4)(a), 139.30(1m), 139.75(9n) and (12), 139.76(1) and (3), 139.761, 139.78(1), (2), and (3m), 139.803, 139.805, and 139.82(8) of the statutes (intro.)

D-note



Insert 3-12

Fix components

Insert 3-15

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0574/P2dn

JK:jld:rs

date

↑
keep

Representative Bies:✓

Please review this draft carefully to ensure that it is consistent with your intent.
Because the draft is fairly complex, you may want DOR to review it.✓

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0593/1
MDK:jld:rs

2013 BILL

or at a business where
individuals under the age of
18 are prohibited from
entering

Insert 1-2

- 1 AN ACT *to amend* 134.66 (4) (a) 1.; and *to create* 134.66 (2) (f) of the statutes;
2 relating to: placement of cigarettes or tobacco products by retailers; and
3 providing a penalty.

Insert
A-2

Analysis by the Legislative Reference Bureau

Under current law, a retailer of cigarettes or tobacco products must obtain a license from the city, village, or town in which the sales take place. Current law also imposes certain restrictions on a retailer's sale of cigarettes or tobacco products. This bill creates a new restriction by allowing a retailer to place the cigarettes or tobacco products only in locations that are inaccessible to customers without the assistance of the retailer or the retailer's employee or agent. The bill specifies that an allowable location includes behind the counter or in a locked case. The bill's restriction does not apply to cigarettes or tobacco products sold in a vending machine. Current law imposes restrictions on sales from a vending machine that this bill does not affect.

A retailer who violates the bill's restriction is subject to the same penalties that apply to violations of certain restrictions that apply under current law to retailers of cigarettes or tobacco products. Those penalties include: 1) a forfeiture of not more than \$500, if the retailer has committed a previous violation within 12 months; 2) a forfeiture of not less than \$200 nor more than \$500, if the retailer has not committed a previous violation within 12 months; and 3) suspension of the retailer's license for

BILL*end of insert
A-2*

a period of time that depends on the number of previous violations committed by the retailer.

Insert 2-13
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.66 (2) (f) of the statutes is created to read:

2 134.66 (2) (f) A retailer may place cigarettes or tobacco products only in
3 locations that are inaccessible to customers without the assistance of the retailer or
4 the retailer's employee or agent, including behind the counter or in a locked case.

5 This paragraph does not apply to cigarettes or tobacco products sold from a vending
6 machine *or at a business where individuals who are less than 18 years old are prohibited from entering*

7 **SECTION 2.** 134.66 (4) (a) 1. of the statutes is amended to read:

8 134.66 (4) (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a),
9 (am), (cm), or (e), or (f) or a local ordinance which strictly conforms to sub. (2) (a), (am),
10 (cm), or (e), or (f).

11 **SECTION 3. Effective date.**

12 *Fix component* (1) This act takes effect on the first day of the 7th month beginning after
13 publication.

14 ~~(END)~~

the treatment of section 134.66(2)(f) and (4)(a)1. of the statutes

Insert 3-15

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0574/P2ins
JK:jld:rs

LPS -
inserts
out of order

Insert A - 1

This bill increases the tobacco products tax rate on tobacco products, not including moist snuff, to 84 percent of the manufacturer's list price to distributors and eliminates the maximum rate on cigars of 50 cents on each cigar. Under the bill, however, the excise tax rate on tobacco products sold or consumed in this state is the greater of the rate based on the manufacturer's list price or the rate determined as follows:

1. For a package of four cigars, an amount equal to the amount of the cigarette excise tax (cigarette tax) imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.
2. For single-unit tobacco products, on each single-use unit, an amount equal to the cigarette tax imposed on one cigarette.
3. For any smokeless tobacco product that consists of loose tobacco, on 1.2 ounces, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.
4. For any loose tobacco that is intended for smoking, on 0.65 ounces, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.
5. For any other tobacco product, on each package or container, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes.

Under current law the cigarette tax is 12.6 cents per cigarette (\$2.52 for a pack of 20 cigarettes). Under current law, an inventory tax is imposed on cigarettes held in inventory for sale or resale so that, if the cigarette tax rate increases, the person holding cigarettes in inventory must pay the increase on those cigarettes. The bill creates an inventory tax on tobacco products held in inventory for sale or resale so that, if the tobacco products tax rates increase, the person holding tobacco products must pay the increase on those products.

Under current law, for cigarette tax purposes, a cigarette is defined as any roll of tobacco wrapped in paper or any substance other than tobacco. The bill retains that definition, but also defines a cigarette as any of the following:

1. Any roll containing tobacco that is intended for smoking, wrapped in any substance, and weighing not more than 4.5 pounds per thousand, not including any roll containing tobacco that is intended for smoking, does not have a filter, and is wrapped entirely in tobacco leaf.
2. Any roll containing tobacco wrapped in any substance that, because of the type of tobacco used in the filter or because of its appearance, size, packaging, pricing, or marketing is likely to be purchased by a consumer as a cigarette.
3. Any roll made in whole or in part of tobacco that is intended for smoking that is either not labeled or is labeled as something other than a cigarette, if it is sold under certain conditions that are similar to the way that cigarettes are sold.

(end insert A-1)

Insert 2 - 1 A



check
spacing

✓
1 **SECTION 1.** 73.01 (4) (a) of the statutes is amended to read:

2 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
3 the commission shall be the final authority for the hearing and determination of all
4 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
5 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
6 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
7 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, ✓ 139.761, 139.78, 341.405,
8 and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect
9 to a pending appeal there is filed with the commission a stipulation signed by the
10 department of revenue and the adverse party, under s. 73.03 (25), or the department
11 of transportation and the adverse party agreeing to an affirmance, modification, or
12 reversal of the department of revenue's or department of transportation's position
13 with respect to some or all of the issues raised in the appeal, the commission shall
14 enter an order affirming or modifying in whole or in part, or canceling the assessment
15 appealed from, or allowing in whole or in part or denying the petitioner's refund
16 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
17 No responsibility shall devolve upon the commission, respecting the signing of an
18 order of dismissal as to any pending appeal settled by the department of revenue or
19 the department of transportation without the approval of the commission.

History: 1973 c. 90; 1975 c. 39, 199; 1977 c. 29; 1979 c. 177 s. 85; 1979 c. 221; 1981 c. 20, 317; 1983 a. 27, 277; 1985 a. 29 ss. 1403 to 1411, 3202 (56) (d); 1987 a. 27 ss. 1542m, 1543m, 3202 (47) (a); 1987 a. 142, 186, 198, 312, 399, 403; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 335; 1991 a. 39, 262, 315, 316; 1993 a. 184, 213; 1995 a. 351; 1997 a. 27; 1999 a. 145; 2001 a. 16; 2003 a. 33; 2005 a. 49; 2007 a. 20; 2011 a. 68.

Insert 2 - 21

✓
20 **SECTION 2.** 139.30 (1m) of the statutes is repealed and recreated to read:

21 139.30 (1m) "Cigarette" means all of the following: ✓

22 (a) Any roll of tobacco wrapped in paper or in any substance other than tobacco. ✓



(b) Any roll containing tobacco that is intended for smoking, wrapped in any substance, and weighing not more than 4.5[✓] pounds per thousand, not including any roll containing tobacco that is intended for smoking, does not have a filter, and is wrapped entirely in tobacco leaf.[✓]

(c) Any roll containing tobacco wrapped in any substance that, because of the type of tobacco used in the filter or because of its appearance, size, packaging, pricing, or marketing is likely to be offered to, purchased by, or consumed by individuals as a cigarette, as described in par. (a)[✓] or (b)[✓], regardless of how[✓] it is labeled. *check spacing*

(d) Any roll made in whole or in part of tobacco that is intended for smoking that is either not labeled or is labeled as something other than a cigarette, if it satisfies[✓] 2 or more of the following conditions:

1. It is sold in packs containing 20 or 25[✓] sticks.
2. It is available for sale in cartons of 10 packs.[✓]
3. It is sold in soft packs, hard packs, flip top boxes, clam shells, or other containers that typically hold cigarettes.[✓]
4. It is the same length and diameter as a commercially manufactured cigarette.[✓]
5. It has a cellulose acetate filter or some other integrated filter.[✓]
6. It weighs no more than 4.5[✓] pounds per thousand sticks.
7. It is marketed or advertised to consumers as a cigarette or cigarette substitute.[✓]

SECTION 3. 139.75 (9n)[✓] of the statutes is created to read:

139.75 (9n) "Single-unit tobacco product"[✓] means any tobacco product other than a cigarette or cigar that is offered in discrete single-use[✓] tablets, lozenges,



1 pouches, pills, or other single dose or single unit, or in packages of such single-use[✓]
2 doses or units.

3 **SECTION 4.** 139.75 (12)[✓] of the statutes is amended to read:

4 139.75 (12) "Tobacco products" means cigars; cheroots; stogies; periques;
5 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff,
6 including moist snuff;[✓] single-unit tobacco products; snuff flour; cavendish; plug and
7 twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings,
8 cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in
9 such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both
10 for chewing and smoking[✓] any other product containing, or made or derived from,
11 tobacco that is intended for human consumption, regardless of whether it is chewed,
12 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means;
13 but "tobacco products" does not include cigarettes, as defined under s. 139.30 (1m),
14 or any tobacco product that the [✓] United States [✓] Federal Food and Drug Administration has
15 approved for sale as a tobacco cessation or tobacco dependence product, or for another
16 medical purpose, and that is being marketed and sold solely for the approved
17 purpose.[✓]

History: 1981 c. 20; 1985 a. 302; 1997 a. 27; 1999 a. 9; 2000 a. 25, 49; 2007 a. 20.

18 **SECTION 5.** 139.76 (1) of the statutes is amended to read:

19 139.76 (1) An Except as provided in sub. (3),[✓] an excise tax is imposed upon the
20 sale, offering or exposing for sale, possession with intent to sell or removal for
21 consumption or sale or other disposition for any purpose of tobacco products by any
22 person engaged as a distributor of them at the rate, for tobacco products, not
23 including moist snuff, of 71 [✓] 84 percent of the manufacturer's established list price
24 to distributors without diminution by volume or other discounts on domestic



1 products and, for moist snuff, at the rate of 100 percent of the manufacturer's
2 established list price to distributors without diminution by volume or other discounts
3 on domestic products. ~~The tax imposed under this subsection on cigars shall not~~
4 ~~exceed an amount equal to 50 cents for each cigar.~~ ✓ On products imported from
5 another country, not including moist snuff, the rate of tax is 71 [✓]84 percent of the
6 amount obtained by adding the manufacturer's list price to the federal tax, duties
7 and transportation costs to the United States. On moist snuff imported from another
8 country, the rate of the tax is 100 percent of the amount obtained by adding the
9 manufacturer's list price to the federal tax, duties, and transportation costs to the
10 United States. The tax attaches at the time the tobacco products are received by the
11 distributor in this state. The tax shall be passed on to the ultimate consumer of the
12 tobacco products. All tobacco products received in this state for sale or distribution
13 within this state, except tobacco products actually sold as provided in sub. (2), shall
14 be subject to such tax. (end ins)

History: 1981 c. 20; 1983 a. 27; 1989 a. 56; 1999 a. 9; 2001 a. 16; 2005 a. 22; 2007 a. 20; 2009 a. 28.

Insert 3 - 12

15 (a) For a package of ²⁴four cigars, an amount equal to the amount of the tax
16 imposed under s. 139.31 (1) (a) on a pack of 20 [✓]cigarettes, and at a proportionate rate
17 for any other quantity. No cigars with a wholesale price of less than \$1 [✓]per cigar may
18 be sold in this state in a package containing fewer than ²⁵five such cigars.

19 (b) For single-unit [✓]tobacco products, on each single-use [✓]unit, an amount equal
20 to the amount of the tax imposed under s. 139.31 (1) (a) on one [✓]cigarette. No
21 single-unit [✓]tobacco products may be sold in this state in packages containing fewer
22 than 20 single-use [✓]units.

↓


1 (c) For any smokeless tobacco product that consists of loose tobacco or that is
2 otherwise not a product described under par. (b), on 1.2 ounces, an amount equal to
3 the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a
4 proportionate rate for any other quantity.

5 (d) For any loose tobacco that is intended for smoking, on 0.65 ounces, an
6 amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes,
7 and at a proportionate rate for any other quantity.

8 (e) For any tobacco product other than that listed in pars. (a) to (d), on each
9 package or container, an amount equal to the tax imposed under s. 139.31 (1) (a) on
10 a pack of 20 cigarettes. For purposes of this paragraph, the tax applies to the
11 smallest, discrete package or container in any larger package or container intended
12 for sale to consumers that contains multiple smaller packages or containers.

13 **SECTION 6.** 139.761 of the statutes is created to read:

14 **139.761 Tobacco products inventory tax imposed; procedures.** (1)
15 INVENTORY TAX IMPOSED. On the effective date of any increase in the rates under s.
16 139.76 (1) and (3), including any increase in the rates calculated under s. 139.76 (3)
17 resulting from an increase in the rate imposed under s. 139.31 (1) (a), an inventory
18 tax is imposed on tobacco products held in inventory for sale or resale on which the
19 tobacco products tax has been paid at the prior rate. Any person who is in possession
20 of any such tobacco products shall pay the tax imposed under this section. Any
21 person liable for this tax shall determine the amount of the tobacco products in the
22 person's possession on the effective date of the increase and shall file a return, and
23 pay the tax due, on or before the 30th day after the effective date of the increase.



(2) INVENTORY TAX COMPUTATION. The tobacco products inventory tax under this section is computed by multiplying the amount of tobacco products held in inventory for sale or resale by the difference between the prior tax rate and the new tax rate.

(3) ADMINISTRATION. Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c) and (2) to (7), 71.92, 73.01, 73.015, and 73.0301 apply to this section.

(4) LATE FILING FEE. Any person who fails to file a tobacco products inventory tax return when due shall pay a late filing fee of \$50. A return that is mailed is timely if it is mailed in a properly addressed envelope with postage prepaid, if the envelope is postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(5) INTEREST ON DELINQUENT PAYMENTS. If any person does not timely pay the tax imposed under this section, that person is liable for interest at the rate of 2 percent per month or fraction of a month from the date ^{on which} the tax is due until the date when the tax is paid.

(6) PENALTY. If any person who is liable for the tax under this section files a false or fraudulent return, that person is also liable, in addition to the tax due, for an amount equal to the amount of tax the person evaded or attempted to evade.

SECTION 7. 139.78 (1) of the statutes is amended to read:

1

139.78 (1) ~~Except as provided in sub. (3m),~~ a tax is imposed upon the use or

2

storage by consumers of tobacco products in this state at the rate, for tobacco

3

products, not including moist snuff, of ~~71~~ ⁸⁴ percent of the cost of the tobacco products

4

and, for moist snuff, at the rate of 100 percent of the manufacturer's established list

5

price to distributors without diminution by volume or other discounts on domestic

6

products. ~~The tax imposed under this subsection on cigars shall not exceed an~~

7

~~amount equal to 50 cents for each cigar.~~ The tax does not apply if the tax imposed

8

by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are

9

exempt from the tobacco products tax under s. 139.76 (2).

History: 1981 c. 20; 1985 a. 332; 1987 a. 312 s. 17; 1991 a. 39; 1997 a. 27; 2001 a. 16; 2007 a. 20; 2009 a. 28.

10

SECTION 8. 139.78 (2) of the statutes is amended to read:

11

139.78 (2) On or before the 15th day of each month, every consumer who during

12

the preceding month has acquired title to or possession for use or storage in this state

13

of tobacco products upon which the tax imposed by s. 139.76 (1) and (3) has not been

14

paid shall file a return showing the quantity of tobacco products acquired. At the

15

time when the return is filed, the consumer shall pay the tax.

History: 1981 c. 20; 1985 a. 332; 1987 a. 312 s. 17; 1991 a. 39; 1997 a. 27; 2001 a. 16; 2007 a. 20; 2009 a. 28.

16

SECTION 9. 139.78 (3m) of the statutes is created to read:

17

139.78 (3m) Beginning on the effective date of this subsection [LRB inserts

18

date], a person who is subject to the tax imposed under sub. (1) shall pay the greater

19

of the amount determined under sub. (1) or the amount determined under s. 139.76

20

(3).

21

SECTION 10. 139.803 (intro.) of the statutes is amended to read:

22

139.803 Refunds to Indian tribes. (intro.) The department may refund the

23

taxes collected under s. 139.76 (1) and (3) in respect to sales on reservations or trust

24

lands of an Indian tribe to the tribal council of the tribe having jurisdiction over the

reservation or trust land on which the sale is made only if all of the following conditions are fulfilled:

History: 1999 a. 9; 2009 a. 28.

SECTION 11. 139.805 of the statutes is amended to read:

139.805 Agreements with Indian tribes. The department may enter into agreements with Indian tribes to provide for the refunding of the tobacco products tax imposed under s. 139.76 (1) and (3). If the department enters into an agreement with an Indian tribe, the agreement may provide for refunding 100% of that tax on tobacco products sold on the tribal reservation to enrolled members of the tribe residing on the tribal reservation and may provide for refunding 50% of that tax on tobacco products sold on the tribal reservation to persons who are not enrolled members of the tribe residing on the tribal reservation.

History: 1999 a. 9.

SECTION 12. 139.82 (8) of the statutes is amended to read:

139.82 (8) Each distributor shall collect and remit the excise tax imposed by s. 139.76 (1) and (3) on tobacco products not exempt from the tobacco products tax under s. 139.76 (2), with the reports required to be filed under this section.

History: 1981 c. 20; 1987 a. 312; 1991 a. 39; 1997 a. 27; 1999 a. 9; 2011 a. 68.

SECTION 13. Nonstatutory provisions.

(1) TOBACCO PRODUCTS INVENTORY TAX. Any person who is in possession of tobacco products in inventory for sale or resale on the effective date of this subsection is subject to the tobacco products inventory tax imposed under section 139.761 of the statutes, as created by this act, based on the difference between the prior tax rate imposed under section 139.76 (1) of the statutes and the new tax rates imposed under section 139.76 (1) of the statutes, as affected by this act, and section 139.76 (3) of the statutes as created by this act.

2011 Stats.

22

23



1 (2) CIGARETTE INVENTORY TAX.✓ Any person who is in possession of tobacco
2 products in inventory for sale or resale on the effective date of this subsection✓ is
3 subject to the cigarette inventory tax imposed under section 139.315✓ of the statutes
4 for any such tobacco products that are considered cigarettes under section 139.30
5 (1m)✓ of the statutes, as affected by this act. The calculation of the cigarette inventory
6 tax is based on the difference between the tax rate imposed under section✓ 139.76 (1)
7 of the statutes✓ and the tax rate imposed under section 139.31 (1)✓ of the statutes.

as affected by this act

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0574/P2dn

JK:jld:jm

January 16, 2013

Representative Bies:

Please review this draft carefully to ensure that it is consistent with your intent. Because the draft is fairly complex, you may want DOR to review it.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Bruce, Cory
Sent: Monday, July 08, 2013 4:19 PM
To: Kreye, Joseph
Subject: Tobacco Tax definitions/suggestions

Hi Joe,

We had our fingers crossed this issue might find its way into the budget, but no luck. So we're ready to take another crack at it. I'm forwarding to you some additional thoughts the anti-tobacco folks have about the bill. (For reference sake it was LRB 0574). I'm thinking it makes sense for you to take a look at this and then get everyone together again to discuss it and maybe then you can address some of the things they have questions about. Would you be able to meet the week of July 15th? If so, what days are best for you (our only day that is bad is Wednesday)

And just for clarification on process...I think this is still a P draft, so once we say it's good to go, and it's no longer a p draft, will it then be a /1? I think so, but I'm blanking on that.

Thanks,
Cory

From: Melissa Horn [<mailto:mhorn@healthfirstwi.org>]
Sent: Friday, June 28, 2013 4:48 PM
To: Bruce, Cory
Subject: OTP definitions/suggestions

Hi Cory,

For the drafter, here's some points we'd like to discuss:

1. Changing the proposed definition in Wisconsin for cigarettes to:

(1m) "Cigarette" means any roll of tobacco that weighs 4.5 pounds or less per thousand and:

(a) is wrapped in paper or any substance other than tobacco; or

(b) is wrapped in any substance containing tobacco, however labeled or named, which, because of its appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to or purchased by consumers as a cigarette, as defined in clause (1), unless it is wrapped in whole tobacco leaf and does not have a cellulose acetate or other cigarette-like filter.

2. Since we have a single-unit definition, add language to the current moist snuff definition to exclude the new "single-unit tobacco products." Suggested changes are:

Section XX. 139.75(5d) of the statutes is amended to read:

139.75 (5d) "Moist snuff" means any finely cut, ground, or powdered smokeless tobacco, or blend containing tobacco that is intended to be placed or dipped in the mouth for oral consumption without being combusted, but "moist snuff" does not include single-unit tobacco products, as defined under s. 139.75 (9n).

3. This ones more of a question than a change. On page 7, line 13, subsection (c), wonder if we need to add in "including moist snuff" to clarify that that we are would also apply the minimum tax to those products? Wanted to get his opinion on that.

*Per our conversation, maybe meet to discuss sometime the week of July 15th just to refresh on all of this? Thank you again SO MUCH to you and Garey for all your help on support on this issue. Have a great holiday week ahead!!!

--

Melissa Horn
Policy and Grassroots Specialist - Tobacco
321 E Main Street, Madison, WI 53703
(608) 443-4366/ (314) 952-4742 cell
mhorn@healthfirstwi.org

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0574/P2
JK&MDK:jld/jm

ESAC RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N in 7-19-13

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Perf

1 AN ACT *to amend* 73.01 (4) (a), 134.66 (4) (a) 1., 139.75 (12), 139.76 (1), 139.78
2 (1), 139.78 (2), 139.803 (intro.), 139.805 and 139.82 (8); *to repeal and recreate*
3 139.30 (1m); and *to create* 134.66 (2) (f), 139.75 (9n), 139.76 (3), 139.761 and
4 139.78 (3m) of the statutes; **relating to:** a minimum tax on tobacco products,
5 placement of cigarettes or tobacco products by retailers, and providing a
6 penalty.

Analysis by the Legislative Reference Bureau

✓ Under current law, the excise tax rate on tobacco products sold in this state is 71 percent of the manufacturer's list price to distributors, except that the tax rate on moist snuff sold in this state is 100 percent of the manufacturer's list price to distributors. Under current law, the maximum tax on cigars is 50 cents for each cigar. ✓

This bill increases the tobacco products tax rate on tobacco products, not including moist snuff, to 84 percent of the manufacturer's list price to distributors and eliminates the maximum rate on cigars of 50 cents on each cigar. ✓ Under the bill, however, the excise tax rate on tobacco products sold or consumed in this state is the greater of the rate based on the manufacturer's list price or the rate determined as follows:

1. For a package of four cigars, an amount equal to the amount of the cigarette excise tax (cigarette tax) imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity. ✓

including moist snuff,

2. For single-unit tobacco products, on each single-use unit, an amount equal to the cigarette tax imposed on one cigarette. ✓

3. For any smokeless tobacco product that consists of loose tobacco, on 1.2 ounces, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity. ✓

4. For any loose tobacco that is intended for smoking, on 0.65 ounce, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity. ✓

5. For any other tobacco product, on each package or container, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes. ✓

Under current law the cigarette tax is 12.6 cents per cigarette (\$2.52 for a pack of 20 cigarettes). Under current law, an inventory tax is imposed on cigarettes held in inventory for sale or resale so that, if the cigarette tax rate increases, the person holding cigarettes in inventory must pay the increase on those cigarettes. The bill creates an inventory tax on tobacco products held in inventory for sale or resale so that, if the tobacco products tax rates increase, the person holding tobacco products must pay the increase on those products. ✓

Under current law, for cigarette tax purposes, a cigarette is defined as any roll of tobacco wrapped in paper or any substance other than tobacco. The bill retains that definition, but also defines a cigarette as any of the following:

1. Any roll containing tobacco that is intended for smoking, wrapped in any substance, and weighing not more than 4.5 pounds per thousand, not including any roll containing tobacco that is intended for smoking, does not have a filter, and is wrapped entirely in tobacco leaf.

2. Any roll containing tobacco wrapped in any substance that because of the type of tobacco used in the filter or because of its appearance, size, packaging, pricing, or marketing is likely to be purchased by a consumer as a cigarette.

3. Any roll made in whole or in part of tobacco that is intended for smoking that is either not labeled or is labeled as something other than a cigarette, if it is sold under certain conditions that are similar to the way that cigarettes are sold.

Under current law, a retailer of cigarettes or tobacco products must obtain a license from the city, village, or town in which the sales take place. Current law also imposes certain restrictions on a retailer's sale of cigarettes or tobacco products. This bill creates a new restriction by allowing a retailer to place the cigarettes or tobacco products only in locations that are inaccessible to customers without the assistance of the retailer or the retailer's employee or agent. The bill specifies that an allowable location includes behind the counter or in a locked case. The bill's restriction does not apply to cigarettes or tobacco products sold in a vending machine or at a business where individuals under the age of 18 are prohibited from entering. Current law imposes restrictions on sales from a vending machine that this bill does not affect.

A retailer who violates the bill's restriction is subject to the same penalties that apply to violations of certain restrictions that apply under current law to retailers of cigarettes or tobacco products. Those penalties include: 1) a forfeiture of not more than \$500, if the retailer has committed a previous violation within 12 months; 2) a forfeiture of not less than \$200 nor more than \$500, if the retailer has not committed

*Insert
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a previous violation within 12 months; and 3) suspension of the retailer's license for a period of time that depends on the number of previous violations committed by the retailer.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✕

1 **SECTION 1.** 73.01 (4) (a) of the statutes is amended to read:

2 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
3 the commission shall be the final authority for the hearing and determination of all
4 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
5 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
6 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
7 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.761, 139.78, 341.405,
8 and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect
9 to a pending appeal there is filed with the commission a stipulation signed by the
10 department of revenue and the adverse party, under s. 73.03 (25), or the department
11 of transportation and the adverse party agreeing to an affirmance, modification, or
12 reversal of the department of revenue's or department of transportation's position
13 with respect to some or all of the issues raised in the appeal, the commission shall
14 enter an order affirming or modifying in whole or in part, or canceling the assessment
15 appealed from, or allowing in whole or in part or denying the petitioner's refund
16 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
17 No responsibility shall devolve upon the commission, respecting the signing of an
18 order of dismissal as to any pending appeal settled by the department of revenue or
19 the department of transportation without the approval of the commission.

x

1 **SECTION 2.** 134.66 (2) (f) of the statutes is created to read:

2 134.66 (2) (f) A retailer may place cigarettes or tobacco products only in
3 locations that are inaccessible to customers without the assistance of the retailer or
4 the retailer's employee or agent, including behind the counter or in a locked case.
5 This paragraph does not apply to cigarettes or tobacco products sold from a vending
6 machine or at a business where individuals who are less than 18 years old are
7 prohibited from entering.

x

8 **SECTION 3.** 134.66 (4) (a) 1. of the statutes is amended to read:

9 134.66 (4) (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a),
10 (am), (cm), ~~or (e),~~ or (f) or a local ordinance which strictly conforms to sub. (2) (a), (am),
11 (cm), ~~or (e),~~ or (f).

12 **SECTION 4.** 139.30 (1m) of the statutes is repealed and recreated to read:

13 139.30 (1m) "Cigarette" means all of the following:

14 (a) Any roll of tobacco wrapped in paper or in any substance other than tobacco.

15 (b) Any roll containing tobacco that is intended for smoking, wrapped in any
16 substance, and weighing not more than 4.5 pounds per thousand, not including any
17 roll containing tobacco that is intended for smoking, does not have a filter, and is
18 wrapped entirely in tobacco leaf.

19 (c) Any roll containing tobacco wrapped in any substance that, because of the
20 type of tobacco used in the filter or because of its appearance, size, packaging, pricing,
21 or marketing is likely to be offered to, purchased by, or consumed by individuals as
22 a cigarette, as described in par. (a) or (b), regardless of how it is labeled.

23 (d) Any roll made in whole or in part of tobacco that is intended for smoking that
24 is either not labeled or is labeled as something other than a cigarette, if it satisfies
25 2 or more of the following conditions:

e

- 1 1. It is sold in packs containing 20 or 25 sticks.
- 2 2. It is available for sale in cartons of 10 packs.
- 3 3. It is sold in soft packs, hard packs, flip top boxes, clam shells, or other
- 4 containers that typically hold cigarettes.
- 5 4. It is the same length and diameter as a commercially manufactured
- 6 cigarette.
- 7 5. It has a cellulose acetate filter or some other integrated filter.
- 8 6. It weighs no more than 4.5 pounds per thousand sticks.
- 9 7. It is marketed or advertised to consumers as a cigarette or cigarette
- 10 substitute.

11 **SECTION 5.** 139.75^x (9n) of the statutes is created to read:

12 139.75 (9n) "Single-unit tobacco product" means any tobacco product other

13 than a cigarette or cigar that is is offered in discrete single-use tablets, lozenges,

14 pouches, pills, or other single dose or single unit, or in packages of such single-use

15 doses or units.

16 **SECTION 6.** 139.75^x (12) of the statutes is amended to read:

17 139.75 (12) "Tobacco products" means cigars; cheroots; stogies; periques;

18 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff,

19 including moist snuff; single-unit tobacco products; snuff flour; cavendish; plug and

20 twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings,

21 cuttings and sweepings of tobacco and ~~other kinds and forms of tobacco prepared in~~

22 ~~such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both~~

23 ~~for chewing and smoking~~ any other product containing, or made or derived from,

24 tobacco that is intended for human consumption, regardless of whether it is chewed,

25 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means;

1 but “tobacco products” does not include cigarettes, as defined under s. 139.30 (1m),
2 or any tobacco product that the federal Food and Drug Administration has approved
3 for sale as a tobacco cessation or tobacco dependence product, or for another medical
4 purpose, and that is being marketed and sold solely for the approved purpose.

5 **SECTION 7.** 139.76² (1) of the statutes is amended to read:

6 139.76 (1) ~~An~~ Except as provided in sub. (3), an excise tax is imposed upon the
7 sale, offering or exposing for sale, possession with intent to sell or removal for
8 consumption or sale or other disposition for any purpose of tobacco products by any
9 person engaged as a distributor of them at the rate, for tobacco products, not
10 including moist snuff, of ~~71~~ 84 percent of the manufacturer’s established list price
11 to distributors without diminution by volume or other discounts on domestic
12 products and, for moist snuff, at the rate of 100 percent of the manufacturer’s
13 established list price to distributors without diminution by volume or other discounts
14 on domestic products. ~~The tax imposed under this subsection on cigars shall not~~
15 ~~exceed an amount equal to 50 cents for each cigar.~~ On products imported from
16 another country, not including moist snuff, the rate of tax is ~~71~~ 84 percent of the
17 amount obtained by adding the manufacturer’s list price to the federal tax, duties
18 and transportation costs to the United States. On moist snuff imported from another
19 country, the rate of the tax is 100 percent of the amount obtained by adding the
20 manufacturer’s list price to the federal tax, duties, and transportation costs to the
21 United States. The tax attaches at the time the tobacco products are received by the
22 distributor in this state. The tax shall be passed on to the ultimate consumer of the
23 tobacco products. All tobacco products received in this state for sale or distribution
24 within this state, except tobacco products actually sold as provided in sub. (2), shall
25 be subject to such tax.

^x
SECTION 8. 139.76 (3) of the statutes is created to read:

139.76 (3) Beginning on the effective date of this subsection [LRB inserts date], a person who is subject to the tax imposed under sub. (1) shall pay the greater of the amount determined under sub. (1) or the following:

(a) For a package of 4 cigars, an amount equal to the amount of the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate rate for any other quantity. No cigars with a wholesale price of less than \$1 per cigar may be sold in this state in a package containing fewer than 5 such cigars.

(b) For single-unit tobacco products, on each single-use unit, an amount equal to the amount of the tax imposed under s. 139.31 (1) (a) on one cigarette. No single-unit tobacco products may be sold in this state in packages containing fewer than 20 single-use units.

including moist snuff,
(c) For any smokeless tobacco product that consists of loose tobacco or that is otherwise not a product described under par. (b), on 1.2 ounces, an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

(d) For any loose tobacco that is intended for smoking, on 0.65 ounces, an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

(e) For any tobacco product other than that listed in pars. (a) to (d), on each package or container, an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes. For purposes of this paragraph, the tax applies to the smallest, discrete package or container in any larger package or container intended for sale to consumers that contains multiple smaller packages or containers.

^x
SECTION 9. 139.761 of the statutes is created to read:

including dry pipe tobacco, but not including wet pipe tobacco,

139.761 Tobacco products inventory tax imposed; procedures. (1)

INVENTORY TAX IMPOSED. On the effective date of any increase in the rates under s. 139.76 (1) and (3), including any increase in the rates calculated under s. 139.76 (3) resulting from an increase in the rate imposed under s. 139.31 (1) (a), an inventory tax is imposed on tobacco products held in inventory for sale or resale on which the tobacco products tax has been paid at the prior rate. Any person who is in possession of any such tobacco products shall pay the tax imposed under this section. Any person liable for this tax shall determine the amount of the tobacco products in the person's possession on the effective date of the increase and shall file a return, and pay the tax due, on or before the 30th day after the effective date of the increase.

(2) INVENTORY TAX COMPUTATION. The tobacco products inventory tax under this section is computed by multiplying the amount of tobacco products held in inventory for sale or resale by the difference between the prior tax rate and the new tax rate.

(3) ADMINISTRATION. Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c) and (2) to (7), 71.92, 73.01, 73.015 and 73.0301 apply to this section.

(4) LATE FILING FEE. Any person who fails to file a tobacco products inventory tax return when due shall pay a late filing fee of \$50. A return that is mailed is timely if it is mailed in a properly addressed envelope with postage prepaid, if the envelope is postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department

prescribes. For purposes of this subsection, “mailed” includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

(5) INTEREST ON DELINQUENT PAYMENTS. If any person does not timely pay the tax imposed under this section, that person is liable for interest at the rate of 2 percent per month or fraction of a month from the date on which the tax is due until the date when the tax is paid.

(6) PENALTY. If any person who is liable for the tax under this section files a false or fraudulent return, that person is also liable, in addition to the tax due, for an amount equal to the amount of tax the person evaded or attempted to evade.

SECTION 10. 139.78 (1) of the statutes is amended to read:

139.78 (1) ~~A- Except as provided in sub. (3m), a tax is imposed upon the use or storage by consumers of tobacco products in this state at the rate, for tobacco products, not including moist snuff, of 71 84 percent of the cost of the tobacco products and, for moist snuff, at the rate of 100 percent of the manufacturer’s established list price to distributors without diminution by volume or other discounts on domestic products. The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 cents for each cigar.~~ The tax does not apply if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are exempt from the tobacco products tax under s. 139.76 (2).

SECTION 11. 139.78 (2) of the statutes is amended to read:

139.78 (2) On or before the 15th day of each month, every consumer who during the preceding month has acquired title to or possession for use or storage in this state of tobacco products upon which the tax imposed by s. 139.76 (1) and (3) has not been paid shall file a return showing the quantity of tobacco products acquired. At the time when the return is filed, the consumer shall pay the tax.

✓
1 **SECTION 12.** 139.78 (3m) of the statutes is created to read:

2 139.78 (3m) Beginning on the effective date of this subsection [LRB inserts
3 date], a person who is subject to the tax imposed under sub. (1) shall pay the greater
4 of the amount determined under sub. (1) or the amount determined under s. 139.76
5 (3).

✓
6 **SECTION 13.** 139.803 (intro.) of the statutes is amended to read:

7 **139.803 Refunds to Indian tribes.** (intro.) The department may refund the
8 taxes collected under s. 139.76 (1) and (3) in respect to sales on reservations or trust
9 lands of an Indian tribe to the tribal council of the tribe having jurisdiction over the
10 reservation or trust land on which the sale is made only if all of the following
11 conditions are fulfilled:

✓
12 **SECTION 14.** 139.805 of the statutes is amended to read:

13 **139.805 Agreements with Indian tribes.** The department may enter into
14 agreements with Indian tribes to provide for the refunding of the tobacco products
15 tax imposed under s. 139.76 (1) and (3). If the department enters into an agreement
16 with an Indian tribe, the agreement may provide for refunding 100% of that tax on
17 tobacco products sold on the tribal reservation to enrolled members of the tribe
18 residing on the tribal reservation and may provide for refunding 50% of that tax on
19 tobacco products sold on the tribal reservation to persons who are not enrolled
20 members of the tribe residing on the tribal reservation.

✓
21 **SECTION 15.** 139.82 (8) of the statutes is amended to read:

22 139.82 (8) Each distributor shall collect and remit the excise tax imposed by
23 s. 139.76 (1) and (3) on tobacco products not exempt from the tobacco products tax
24 under s. 139.76 (2), with the reports required to be filed under this section.

25 **SECTION 16. Nonstatutory provisions.**

(1) TOBACCO PRODUCTS INVENTORY TAX. Any person who is in possession of tobacco products in inventory for sale or resale on the effective date of this subsection is subject to the tobacco products inventory tax imposed under section 139.761 of the statutes, as created by this act, based on the difference between the prior tax rate imposed under section 139.76 (1) of the statutes and the new tax rates imposed under section 139.76 (1), 2011 stats., as affected by this act, and section 139.76 (3) of the statutes, as created by this act.

(2) CIGARETTE INVENTORY TAX. Any person who is in possession of tobacco products in inventory for sale or resale on the effective date of this subsection is subject to the cigarette inventory tax imposed under section 139.315 of the statutes for any such tobacco products that are considered cigarettes under section 139.30 (1m) of the statutes, as affected by this act. The calculation of the cigarette inventory tax is based on the difference between the tax rate imposed under section 139.76 (1) of the statutes, as affected by this act, and the tax rate imposed under section 139.31 (1) of the statutes.

SECTION 17. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 73.01 (4) (a), 139.30 (1m), 139.75 (9n) ^{and (14)} (12), 139.76 (1) and (3), 139.761, 139.78 (1), (2), and (3m), 139.803 (intro.), 139.805, and 139.82 (8) of the statutes takes effect on the first day of the 3rd month beginning after publication.

(2) The treatment of section 134.66 (2) (f) and (4) (a) 1. of the statutes takes effect on the first day of the 7th month beginning after publication.

(END)

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2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0574/P3ins
JK&MDK:jld:jm

Insert 2 - A

* Under current law, for cigarette tax purposes, a cigarette is defined as any roll of tobacco wrapped in paper or any substance other than tobacco. Under the bill, a cigarette is defined as any roll of tobacco weighing not more than 4.5 pounds per thousand that is wrapped in paper or any substance other than tobacco or that is wrapped in any substance containing tobacco that, because of the type of tobacco used in the filter or because of its appearance, size, packaging, pricing, or marketing, is likely to be offered to, purchased by, or consumed by individuals as a cigarette, regardless of how ~~the~~ the roll of tobacco is labeled, but not including any roll of tobacco that is wrapped in whole tobacco leaf and does not have a filter.

Under current law, for purposes of the tax imposed on tobacco products, moist snuff is defined as any finely cut, ground, or powdered smokeless tobacco that is intended to be placed or dipped in the mouth. Under the bill, moist snuff is defined as any finely cut, ground, or powdered smokeless tobacco, or blend containing tobacco, that is intended for oral consumption without being lit.

Insert 5 - 10

x

1 **SECTION 1.** 139.30 (1m) of the statutes is amended to read:

2 139.30 (1m) "Cigarette" means any roll of tobacco weighing not more than 4.5
3 pounds per thousand that is wrapped in paper or any substance other than tobacco
4 or that is wrapped in any substance containing tobacco that, because of the type of
5 tobacco used in the filter or because of its appearance, size, packaging, pricing, or
6 marketing, is likely to be offered to, purchased by, or consumed by individuals as a
7 cigarette, regardless of how ~~it~~ the roll of tobacco is labeled, but not including any roll
8 of tobacco that is wrapped in whole tobacco leaf and does not have a filter.

History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25.

9 **SECTION 2.** 139.75 (4b) of the statutes is created to read:

10 139.75 (4b) "Dry pipe tobacco" means tobacco that is labelled as pipe tobacco,
11 but, because of its moisture content and pricing, is likely to be offered to, purchased
12 by, or consumed by individuals as tobacco for rolling cigarettes.

x

13 **SECTION 3.** 139.75 (5d) of the statutes is amended to read:

1 139.75 (5d) "Moist snuff" means any finely cut, ground, or powdered smokeless
2 tobacco, or blend containing tobacco, that is intended ~~to be placed or dipped in the~~
3 ~~mouth~~ for oral consumption without being lit, not including any single-unit tobacco
4 product.

History: 1981 c. 20; 1985 a. 302; 1997 a. 27; 1999 a. 9; 2005 a. 25, 49; 2007 a. 20.

Insert 5 - 25

,X

5 **SECTION 4.** 139.75 (14) of the statutes is created to read:

6 139.75 (14) "Wet pipe tobacco" means tobacco that is intended for smoking in
7 a pipe and that is not suitable or practical for use in rolling cigarettes because of its
8 moisture content and pricing.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0574/P3dn

JK&MDH:jm

Sec

- date -

Representative Bies:

Please review this draft carefully to ensure that it is consistent with your intent.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0574/P3dn

JK:sac:ph

August 2, 2013

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Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0574/P8
JK&MDR:jld&sac:ph

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 9-18-13

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✓
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2. For single-unit tobacco products, on each single-use unit, an amount equal to the cigarette tax imposed on one cigarette.

3. For any smokeless tobacco product that consists of loose tobacco, including moist snuff, on 1.2 ounces, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

4. For any loose tobacco that is intended for smoking, on 0.65 ounce, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

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forfeiture of not less than \$200 nor more than \$500, if the retailer has not committed a previous violation within 12 months; and 3) suspension of the retailer's license for a period of time that depends on the number of previous violations committed by the retailer.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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4 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
5 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
6 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
7 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.761, 139.78, 341.405,
8 and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect
9 to a pending appeal there is filed with the commission a stipulation signed by the
10 department of revenue and the adverse party, under s. 73.03 (25), or the department
11 of transportation and the adverse party agreeing to an affirmance, modification, or
12 reversal of the department of revenue's or department of transportation's position
13 with respect to some or all of the issues raised in the appeal, the commission shall
14 enter an order affirming or modifying in whole or in part, or canceling the assessment
15 appealed from, or allowing in whole or in part or denying the petitioner's refund
16 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
17 No responsibility shall devolve upon the commission, respecting the signing of an
18 order of dismissal as to any pending appeal settled by the department of revenue or
19 the department of transportation without the approval of the commission.

SECTION 2. 134.66 (2) (f) of the statutes is created to read:

134.66 (2) (f) A retailer may place cigarettes or tobacco products only in locations that are inaccessible to customers without the assistance of the retailer or the retailer's employee or agent, including behind the counter or in a locked case. This paragraph does not apply to cigarettes or tobacco products sold from a vending machine or at a business where individuals who are less than 18 years old are prohibited from entering.

SECTION 3. 134.66 (4) (a) 1. of the statutes is amended to read:

134.66 (4) (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a), (am), (cm), ~~or (e),~~ or (f) or a local ordinance which strictly conforms to sub. (2) (a), (am), (cm), ~~or (e),~~ or (f).

SECTION 4. 139.30 (1m) of the statutes is amended to read:

139.30 (1m) "Cigarette" means any roll of tobacco weighing not more than 4.5 pounds per thousand that is wrapped in paper or any substance other than tobacco or that is wrapped in any substance containing tobacco that, because of the type of tobacco used in the filter or because of its appearance, size, packaging, pricing, or marketing, is likely to be offered to, purchased by, or consumed by individuals as a cigarette, regardless of how the roll of tobacco is labeled, but not including any roll of tobacco that is wrapped in whole tobacco leaf and does not have a filter.

SECTION 5. 139.75 (4b) of the statutes is created to read:

139.75 (4b) "Dry pipe tobacco" means tobacco that is labeled as pipe tobacco but, because of its moisture content and pricing, is likely to be offered to, purchased by, or consumed by individuals as tobacco for rolling cigarettes.

SECTION 6. 139.75 (5d) of the statutes is amended to read:

1 139.75 (5d) “Moist snuff” means any finely cut, ground, or powdered smokeless
2 tobacco, or blend containing tobacco, that is intended ~~to be placed or dipped in the~~
3 mouth for oral consumption without being lit, not including any single-unit tobacco
4 product.

5 **SECTION 7.** 139.75 (9n) of the statutes is created to read:

6 139.75 (9n) “Single-unit tobacco product” means any tobacco product other
7 than a cigarette or cigar that is is offered in discrete single-use tablets, lozenges,
8 pouches, pills, or other single dose or single unit, or in packages of such single-use
9 doses or units.

10 **SECTION 8.** 139.75 (12) of the statutes is amended to read:

11 139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;
12 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff,
13 including moist snuff; single-unit tobacco products; snuff flour; cavendish; plug and
14 twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings,
15 cuttings and sweepings of tobacco and ~~other kinds and forms of tobacco prepared in~~
16 ~~such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both~~
17 ~~for chewing and smoking~~ any other product containing, or made or derived from,
18 tobacco that is intended for human consumption, regardless of whether it is chewed,
19 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means;
20 but “tobacco products” does not include cigarettes, as defined under s. 139.30 (1m),
21 or any tobacco product that the federal Food and Drug Administration has approved
22 for sale as a tobacco cessation or tobacco dependence product, or for another medical
23 purpose, and that is being marketed and sold solely for the approved purpose.

24 **SECTION 9.** 139.75 (14) of the statutes is created to read:

1 139.75 (14) “Wet pipe tobacco” means tobacco that is intended for smoking in
2 a pipe and that is not suitable or practical for use in rolling cigarettes because of its
3 moisture content and pricing.

4 **SECTION 10.** 139.76 (1) of the statutes is amended to read:

5 139.76 (1) ~~An~~ Except as provided in sub. (3), an excise tax is imposed upon the
6 sale, offering or exposing for sale, possession with intent to sell or removal for
7 consumption or sale or other disposition for any purpose of tobacco products by any
8 person engaged as a distributor of them at the rate, for tobacco products, not
9 including moist snuff, of ~~71~~ 84 percent of the manufacturer’s established list price
10 to distributors without diminution by volume or other discounts on domestic
11 products and, for moist snuff, at the rate of 100 percent of the manufacturer’s
12 established list price to distributors without diminution by volume or other discounts
13 on domestic products. ~~The tax imposed under this subsection on cigars shall not~~
14 ~~exceed an amount equal to 50 cents for each cigar.~~ On products imported from
15 another country, not including moist snuff, the rate of tax is ~~71~~ 84 percent of the
16 amount obtained by adding the manufacturer’s list price to the federal tax, duties
17 and transportation costs to the United States. On moist snuff imported from another
18 country, the rate of the tax is 100 percent of the amount obtained by adding the
19 manufacturer’s list price to the federal tax, duties, and transportation costs to the
20 United States. The tax attaches at the time the tobacco products are received by the
21 distributor in this state. The tax shall be passed on to the ultimate consumer of the
22 tobacco products. All tobacco products received in this state for sale or distribution
23 within this state, except tobacco products actually sold as provided in sub. (2), shall
24 be subject to such tax.

25 **SECTION 11.** 139.76 (3) of the statutes is created to read:

1 139.76 (3) Beginning on the effective date of this subsection [LRB inserts
2 date], a person who is subject to the tax imposed under sub. (1) shall pay the greater
3 of the amount determined under sub. (1) or the following:

4 (a) For a package of 4 cigars, an amount equal to the amount of the tax imposed
5 under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate rate for any
6 other quantity. No cigars with a wholesale price of less than \$1 per cigar may be sold
7 in this state in a package containing fewer than 5 such cigars.

8 (b) For single-unit tobacco products, on each single-use unit, an amount equal
9 to the amount of the tax imposed under s. 139.31 (1) (a) on one cigarette. No
10 single-unit tobacco products may be sold in this state in packages containing fewer
11 than 20 single-use units.

12 (c) For any smokeless tobacco product that consists of loose tobacco, including
13 moist snuff, or that is otherwise not a product described under par. (b), on 1.2 ounces,
14 an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes,
15 and at a proportionate rate for any other quantity.

16 (d) For any loose tobacco that is intended for smoking, including dry pipe
17 tobacco, but not including wet pipe tobacco, on 0.65 ounces, an amount equal to the
18 tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate
19 rate for any other quantity.

20 (e) For any tobacco product other than that listed in pars. (a) to (d), on each
21 package or container, an amount equal to the tax imposed under s. 139.31 (1) (a) on
22 a pack of 20 cigarettes. For purposes of this paragraph, the tax applies to the
23 smallest, discrete package or container in any larger package or container intended
24 for sale to consumers that contains multiple smaller packages or containers.

25 **SECTION 12.** 139.761 of the statutes is created to read:

139.761 Tobacco products inventory tax imposed; procedures. (1)

INVENTORY TAX IMPOSED. On the effective date of any increase in the rates under s. 139.76 (1) and (3), including any increase in the rates calculated under s. 139.76 (3) resulting from an increase in the rate imposed under s. 139.31 (1) (a), an inventory tax is imposed on tobacco products held in inventory for sale or resale on which the tobacco products tax has been paid at the prior rate. Any person who is in possession of any such tobacco products shall pay the tax imposed under this section. Any person liable for this tax shall determine the amount of the tobacco products in the person's possession on the effective date of the increase and shall file a return, and pay the tax due, on or before the 30th day after the effective date of the increase.

(2) INVENTORY TAX COMPUTATION. The tobacco products inventory tax under this section is computed by multiplying the amount of tobacco products held in inventory for sale or resale by the difference between the prior tax rate and the new tax rate.

(3) ADMINISTRATION. Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c) and (2) to (7), 71.92, 73.01, 73.015 and 73.0301 apply to this section.

(4) LATE FILING FEE. Any person who fails to file a tobacco products inventory tax return when due shall pay a late filing fee of \$50. A return that is mailed is timely if it is mailed in a properly addressed envelope with postage prepaid, if the envelope is postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department

1 prescribes. For purposes of this subsection, “mailed” includes delivery by a delivery
2 service designated under section 7502 (f) of the Internal Revenue Code.

3 (5) INTEREST ON DELINQUENT PAYMENTS. If any person does not timely pay the
4 tax imposed under this section, that person is liable for interest at the rate of 2
5 percent per month or fraction of a month from the date on which the tax is due until
6 the date when the tax is paid.

7 (6) PENALTY. If any person who is liable for the tax under this section files a false
8 or fraudulent return, that person is also liable, in addition to the tax due, for an
9 amount equal to the amount of tax the person evaded or attempted to evade.

10 **SECTION 13.** 139.78 (1) of the statutes is amended to read:

11 139.78 (1) ~~A~~ Except as provided in sub. (3m), a tax is imposed upon the use or
12 storage by consumers of tobacco products in this state at the rate, for tobacco
13 products, not including moist snuff, of ~~71~~ 84 percent of the cost of the tobacco products
14 and, for moist snuff, at the rate of 100 percent of the manufacturer’s established list
15 price to distributors without diminution by volume or other discounts on domestic
16 products. ~~The tax imposed under this subsection on cigars shall not exceed an~~
17 ~~amount equal to 50 cents for each cigar.~~ The tax does not apply if the tax imposed
18 by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are
19 exempt from the tobacco products tax under s. 139.76 (2).

20 **SECTION 14.** 139.78 (2) of the statutes is amended to read:

21 139.78 (2) On or before the 15th day of each month, every consumer who during
22 the preceding month has acquired title to or possession for use or storage in this state
23 of tobacco products upon which the tax imposed by s. 139.76 (1) and (3) has not been
24 paid shall file a return showing the quantity of tobacco products acquired. At the
25 time when the return is filed, the consumer shall pay the tax.

SECTION 15. 139.78 (3m) of the statutes is created to read:

139.78 (3m) Beginning on the effective date of this subsection [LRB inserts date], a person who is subject to the tax imposed under sub. (1) shall pay the greater of the amount determined under sub. (1) or the amount determined under s. 139.76 (3).

SECTION 16. 139.803 (intro.) of the statutes is amended to read:

139.803 Refunds to Indian tribes. (intro.) The department may refund the taxes collected under s. 139.76 (1) and (3) in respect to sales on reservations or trust lands of an Indian tribe to the tribal council of the tribe having jurisdiction over the reservation or trust land on which the sale is made only if all of the following conditions are fulfilled:

SECTION 17. 139.805 of the statutes is amended to read:

139.805 Agreements with Indian tribes. The department may enter into agreements with Indian tribes to provide for the refunding of the tobacco products tax imposed under s. 139.76 (1) and (3). If the department enters into an agreement with an Indian tribe, the agreement may provide for refunding 100% of that tax on tobacco products sold on the tribal reservation to enrolled members of the tribe residing on the tribal reservation and may provide for refunding 50% of that tax on tobacco products sold on the tribal reservation to persons who are not enrolled members of the tribe residing on the tribal reservation.

SECTION 18. 139.82 (8) of the statutes is amended to read:

139.82 (8) Each distributor shall collect and remit the excise tax imposed by s. 139.76 (1) and (3) on tobacco products not exempt from the tobacco products tax under s. 139.76 (2), with the reports required to be filed under this section.

SECTION 19. Nonstatutory provisions.

(1) TOBACCO PRODUCTS INVENTORY TAX. Any person who is in possession of tobacco products in inventory for sale or resale on the effective date of this subsection is subject to the tobacco products inventory tax imposed under section 139.761 of the statutes, as created by this act, based on the difference between the prior tax rate imposed under section 139.76 (1) of the statutes and the new tax rates imposed under section 139.76 (1), 2011 stats., as affected by this act, and section 139.76 (3) of the statutes, as created by this act.

(2) CIGARETTE INVENTORY TAX. Any person who is in possession of tobacco products in inventory for sale or resale on the effective date of this subsection is subject to the cigarette inventory tax imposed under section 139.315 of the statutes for any such tobacco products that are considered cigarettes under section 139.30 (1m) of the statutes, as affected by this act. The calculation of the cigarette inventory tax is based on the difference between the tax rate imposed under section 139.76 (1) of the statutes, as affected by this act, and the tax rate imposed under section 139.31 (1) of the statutes.

SECTION 20. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 73.01 (4) (a), 139.30 (1m), 139.75 (4b), (5d), (9n), (12), and (14), 139.76 (1) and (3), 139.761, 139.78 (1), (2), and (3m), 139.803 (intro.), 139.805, and 139.82 (8) of the statutes takes effect on the first day of the 3rd month beginning after publication.

(2) The treatment of section 134.66 (2) (f) and (4) (a) 1. of the statutes takes effect on the first day of the 7th month beginning after publication.

(END)